

BARNSTABLE, ss

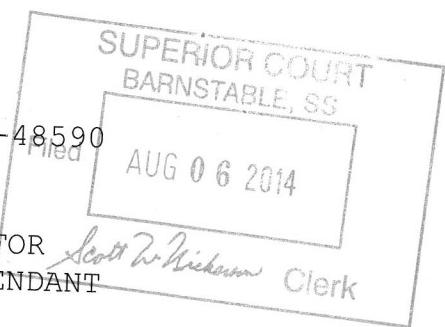
COMMONWEALTH OF MASSACHUSETTS
 SUPERIOR COURT
 IND. NO. BACR2000-48590

COMMONWEALTH)

v)

CHARLES ROBINSON)

) COMMONWEALTH'S MOTION FOR
 EXAMINATION OF THE DEFENDANT
 BY DR. MARTIN KELLY



Now comes the Commonwealth through its District Attorney Michael D. O'Keefe and moves this Honorable Court to order that the defendant submit to a psychiatric examination and evaluation by Dr. Martin Kelly. *G.L. c. 123, §15; Mass.R.Crim. P. 30(c.)*; *Commonwealth v Seng*, 445 Mass. 536 (2005). In addition, the Commonwealth requests that Dr. Kelly be exempt from any impoundment order. An exemption is necessary for him to properly evaluate the defendant's position as submitted, and to come to his own opinion in this matter.

The Commonwealth submits the accompanying affidavit in support.

Respectfully submitted,

Michael D. O'Keefe
 District Attorney
 BBO# 378145

[Handwritten signature of Michael D. O'Keefe]
 Julia K. Höller
 Assistant District Attorney
 BBO# 550378
 Cape & Islands District
 3231 Main Street
 P.O. Box 455
 Barnstable, MA 02630
 (508) 362-8113

August 6, 2014



BARNSTABLE, ss

COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT
IND. NO. BACR2000-48590

COMMONWEALTH)
)
v) AFFIDAVIT
)
CHARLES ROBINSON)

Now comes Julia K. Holler and states:

1. On August 21, 2000, the defendant Charles Robinson was convicted of murder in the first degree and sentenced to life in prison without the possibility of parole.
2. On December 5, 2001, the defendant filed his first motion for a new trial, with accompanying affidavits.
3. On April 16, 2004, the motion judge (Nickerson, J.) held an evidentiary hearing on the defendant's motion for a new trial. Further hearing was held on April 26, 2004. The evidentiary hearing was continued to June 15, 2004.
4. On June 15, 2004, the defendant was ordered to be examined for competence pursuant to G.L. c. 123, §15(a). On June 16, 2004, the defendant was ordered committed for observation for a period not to exceed 20 days.
5. On July 30, 2009, the motion judge (Nickerson, J.) ordered that a new motion for a new trial was to be filed.
6. On March 16, 2011, the motion judge (Nickerson, J.) ordered that the court would take no further action on the two motions for a new trial; that the defendant could file an amended motion for a new trial that clearly set forth the actual and legal bases for relief; that the amended motion must be accompanied by either a detailed supporting affidavit of an appropriate mental health professional or the affidavit of counsel together with the detailed clinical report of an appropriate mental health professional; and that in the event the court conducts a hearing on the amended motion said hearing

JKH

CERTIFICATE OF SERVICE

I, Julia K. Holler, certify that I have on this day delivered in-hand, a copy of the Commonwealth's Motion for Examination of the Defendant by Dr. Martin Kelly to the Clerk of the Barnstable Superior Court, Criminal Business, Barnstable, MA 02630, and I have this day mailed first-class, postage prepaid, a copy of the motion to the defendant's counsel:

Joseph F. Krowski, Esq.
Law Office of Joseph F. Krowski
30 Cottage Street
Brockton, MA 02301

on August 6, 2014



Julia K. Holler
Assistant District Attorney

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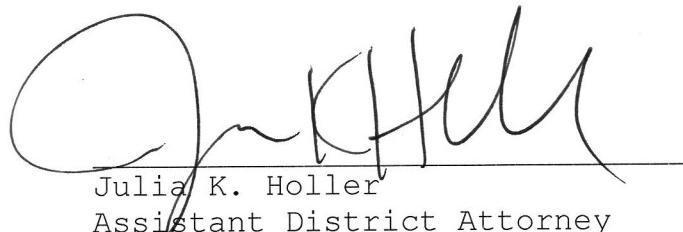


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will commence anew, without reliance upon the testimony and arguments presented on past occasions.

7. On June 2, 2014, the defendant filed his amended motion for a new trial, with an accompanying affidavit, and a motion to impound that affidavit.

8. On June 5, 2014, the Commonwealth was given 60 days in which to file a response.

9. Once the Commonwealth received the motion for a new trial, I began to assemble the papers and transcripts in the case. I discovered that in the intervening ten years from the last hearing, the transcripts and previous case file had been lost.

10. I contacted both stenographers involved in the case to obtain new copies of the trial and motion for new trial transcripts.

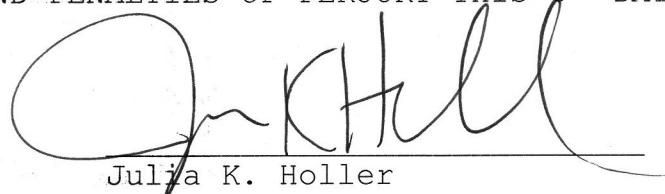
11. Because of difficulties with the age of the transcription data and the new transcription programs that have been developed and used since 2001, the Commonwealth did not receive any transcripts in this case until the week of July 21, 2014. That included an incomplete copy of the transcript relied upon by Dr. Ebert in forming his opinion that the defendant was not competent to stand trial during his trial.

12. First Assistant District Attorney Brian Glenny was away on a pre-scheduled vacation the week of July 28, 2014.

13. After a review of the transcripts and the papers, the Commonwealth is requesting that this Court allow this motion for its expert, Dr. Martin Kelly, to examine the defendant in this matter, as it relates to his criminal responsibility at the time of the trial in this case.

14. The Commonwealth does not concede that the defendant has presented a *prima facie* case, however, there does not appear to be any other mechanism for filing this type of motion, post-conviction other than pursuant to Mass.R.Crim.P. 30(c).

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 6TH DAY OF AUGUST, 2014.



Julia K. Holler

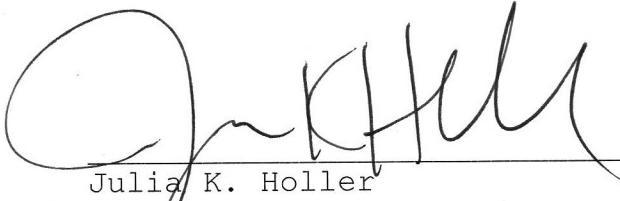


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